

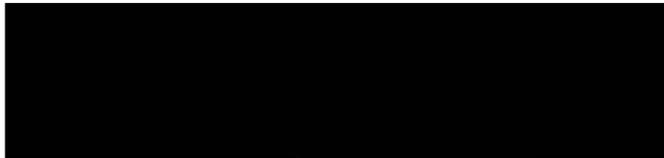
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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(CDJ 2005 692 283)

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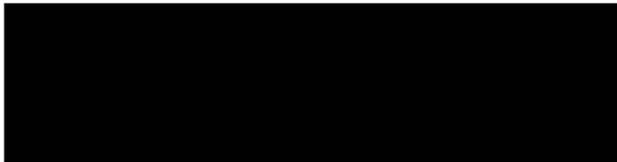
Date: OCT 06 2009

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is married to a naturalized United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and their United States citizen children.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated July 11, 2006.

On appeal, counsel contends that the applicant's qualifying relative would suffer extreme hardship. *Form I-290B and attached brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; a statement from the applicant; medical bills for the applicant's spouse; medical prescriptions for the applicant's spouse; medical records for the applicant's spouse; and a published country conditions report. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or

of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present case, the record indicates that the applicant entered the United States without inspection in September 1991 and voluntarily departed in September 2004, returning to Mexico. *Consular Notes, American Consulate General, Ciudad Juarez, Mexico*, dated October 12, 2005. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until she departed the United States in September 2004. In applying for an immigrant visa, the applicant is seeking admission within ten years of her September 2004 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of section 212(a)(9)(B)(i)(II) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant or her children would experience as a result of her inadmissibility is not directly relevant to the determination as to whether she is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. Hardship to a non-qualifying relative will be considered to the extent that it affects the applicant's spouse. If extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Mexico or the United States, as he is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a native of Mexico. *Naturalization certificate*. Although counsel states that the applicant's spouse has no family ties in

the region of Mexico where the applicant lives, the record does not address whether the applicant's spouse may have family members elsewhere in Mexico. The applicant's spouse notes that he has lived in the United States since 1971 and that he is unaccustomed to the way of life in Mexico. *Statement from the applicant's spouse*, dated August 5, 2006. He asserts that he would be unable to cope in Mexico and that it would be extremely difficult for him to find a job due to his age. *Id.* The record includes a published country conditions report from the United States Department of State that notes the minimum wages throughout Mexico. *Mexico, Country Reports on Human Rights Practices – 2005, United States Department of State*, dated March 8, 2006. While this report states that the minimum wage does not provide a decent standard of living for a worker and family, it also notes that only a small fraction of the workers in the formal workforce received the minimum wage. *Id.* The report makes no mention of age discrimination with regard to employment in Mexico. Furthermore, there is nothing in the record to document that the applicant or her spouse could only be employed in jobs offering the minimum wage. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant's spouse states that it would be difficult to live in his hometown of Tamazula, but even more difficult to grow accustomed to live in the applicant's hometown of La Ladera, a place with which he is unfamiliar. *Statement from the applicant's spouse*, dated August 5, 2006. While the AAO acknowledges these assertions, it notes there is nothing in the record that shows that the applicant's spouse would be required to live in the applicant's hometown.

The applicant's spouse takes various prescribed medications for depression, skin conditions, high blood pressure, and acid reflux. *Medical prescriptions for the applicant's spouse; Medical records for the applicant's spouse*. He asserts that if he were to go to Mexico, the medicine he needs would not be readily available. *Statement from the applicant's spouse*, dated August 5, 2006. The AAO also notes counsel's claim that, in Mexico, the applicant's spouse would be deprived of adequate access to healthcare since he would not have the medical insurance that is provided through his U.S. employment. Counsel states that depriving the applicant's spouse of access to healthcare constitutes extreme hardship. *Attorney's brief*. While the AAO acknowledges these assertions, it notes that the record does not include documentation to support them. No documentary evidence has been submitted to demonstrate that the applicant's spouse would be unable to obtain his medicines in Mexico or that he would be unable to obtain adequate care for his medical needs. Going on record without supporting documentation, is not sufficient to meet the applicant's burden of proof in this proceeding *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant's spouse asserts that his children are having a very difficult time in school in Mexico because they miss their friends and school in the United States. *Statement from the applicant's spouse*, dated September 27, 2005. The AAO notes that the applicant's children are not qualifying relatives for the purpose of this case and the record fails to document how any hardship the applicant's children may encounter affects the applicant's spouse, the only qualifying relative in this

case. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse is a native of Mexico. *Naturalization certificate*. The applicant and her spouse had a child who died in 2004. *Death certificate*. The applicant's spouse states that he and the applicant were devastated when their baby died, and they both became depressed. *Statement from the applicant's spouse*, dated August 5, 2006. The applicant's spouse asserts that he is still affected by what happened and has trouble sleeping at night. *Id.* He has bouts with depression and some days he feels as if he is unable to go on. *Id.* As a result, he has been prescribed Zoloft. *Medical prescription*. He notes that every day that passes hurts him even more because he feels as if he is not there for the applicant, there to comfort, console and support her. *Statement from the applicant's spouse*, dated August 5, 2006. He states that he needs her as much as she needs him. *Id.* The applicant claims that her spouse is the only support she has. *Statement from the applicant*, dated July 2006. While the AAO notes that separation from a loved one is a normal result of the removal process and that *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) has held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship, it also acknowledges the special circumstances in this particular case that make the applicant's and her spouse's situation atypical. The AAO notes the depression diagnosis for the applicant's spouse as documented by medical records. When looking at the aforementioned factors, particularly the death of the child of the applicant and her spouse, and the depression of the applicant's spouse as documented in the record, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

However, as the record has also failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States if he relocates to Mexico, the applicant is not eligible for a waiver of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.